BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment.	Rulemaking 17-06-026 (Filed June 29, 2017)

OPENING COMMENTS OF PENINSULA CLEAN ENERGY AUTHORITY, EAST BAY COMMUNITY ENERGY, SAN DIEGO COMMUNITY POWER, SILICON VALLEY CLEAN ENERGY AUTHORITY, AND SONOMA CLEAN POWER ON JUDGE WANG'S PHASE II PROPOSED DECISION

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Pursuant to Rule 14.3, Peninsula Clean Energy Authority, East Bay Community Energy, San Diego Community Power, Silicon Valley Clean Energy Authority, and Sonoma Clean Power (collectively, the "Joint CCAs") submit these comments on the *Proposed Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization* issued by Judge Wang on April 5, 2021 ("PD" or "Proposed Decision").

The Joint CCAs request the Commission correct the Proposed Decision as detailed in Appendix A to, *inter alia*, impose a schedule for additional RFIs for contract assignment and/or modification, clarify that this decision does not amend or establish any standard, or include any legal interpretation on the standard for review of IOU inaction in contract management, which should be determined in a subsequent proceeding, and adopt a Q1 implementation timeline in the ERRA Forecast proceedings to give parties and the Commission additional time to ensure rates resulting from that case are reasonable, calculated accurately and implemented correctly.

I. THE PD ERRS IN GIVING THE IOUS UNILATERAL DISCRETION ON WHETHER OR WHEN TO HOLD ANOTHER RFI.

The PD errs by "declin[ing] to require IOUs to issue RFIs in future years" on account of suggestion that "the amount of excess RPS resources may decline precipitously within the next

few years."[1] The PD then exacerbates this error by giving the IOUs unilateral discretion to propose in its annual RPS Plan whether to hold another RFI."[2]

The fact that the amount of excess is declining does nothing to change the fact that these legacy RPS contracts are vastly above-market and in some cases exceptionally long-lived. The cost burdens associated with legacy RPS commitments made by the IOUs and retained in the PCIA will continue to hinder the State's electricity affordability objectives, potentially hamper building and transportation electrification efforts, and continue to obstruct long-term planning necessary by CCAs to deliver deeper transformative solutions to climate change within our communities. IOU RPS plans indicate they will utilize existing RPS REC banks to meet compliance,[3] meaning they do not need these pricey resources for compliance and will only seek to continue to sell their output at prices far below their costs. The biggest cost-savings for all ratepayers would be found by buying out, or buying down these particular contracts, and/or terminating those in default. Unfortunately, the record of IOU portfolio optimization illustrates inadequate efforts to date.

By declining to order any RFI process in future years, the Commission proposes that IOUs make no systematic efforts in future to divest these expensive, out-of-market resources, *even if voluntary contract terminations or amendments could be achieved that would save ratepayers money*. Repeating the RFI process on an ongoing basis beyond the first cycle will at

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1 PD at 38-39.

2 *Id*. at 38.

3 For example, see discussion of the impact of PG&E REC bank as of 2019, D.20-02-047. Southern California Edison "estimates [SCE's REC bank] at 18,719 GWh at the start of 2020)," R.18-07-003 *Southern California Edison Company's (U 338-E) Final 2020 Renewables Portfolio Standard Procurement Plan*, at 2 (Feb. 19, 2021). PG&E provides less public information, but "PG&E's total Bank size as of the end of the second compliance period was approximately 12,800 GWh." R.18-07-003, *Submission by Pacific Gas And Electric Company (U 39 E) of Its Final Conforming 2020 Renewables Portfolio Standard Procurement Plan*, at 50 (Feb. 19, 2021).

least add some urgency to the State's efforts to address these contracts. The RFI process is the main mechanism proposed by Working Group 3 to reduce the PCIA by ensuring that avoidable costs are not being overlooked because of inaction. Because market conditions change constantly, a single process in 2022 would be inadequate. Generators not open to a buyout in 2022 may become amenable to an economical buyout in future years. Under the Commission's proposal, however, IOUs would be under no obligation to seek out such cost-saving opportunities in future years.

The costs of any contract that can be terminated for non-performance cannot legally be charged to departed customers, since statute only obliges such customers to reimburse IOUs for "*unavoidable* electricity purchase contract costs."[4] Contracts with counterparties amenable to buyout are avoidable costs, and they do not become unavoidable merely because IOUs fail to investigate such opportunities. The prudent portfolio management standard and the statutory limitations on PCIA charges create an ongoing affirmative duty to seek to reduce the size of the PCIA portfolio on more than the casual, *ad hoc* basis suggested in the PD.

The on-going failure to seek cost savings aggressively reflects the systemic incentives that result from the use of unbundled customer PCIA charges to compensate the IOU's for their above-market portfolios. As the PD concedes, reducing the number of resources in the PCIA portfolio would result in increased costs if PCIA resources were replaced with market resources: "We expect that IOUs should generally be able to procure replacement RPS contracts with lower costs, while acknowledging that replacing resources could still increase costs for bundled ratepayers."[5] However, the IOUs have little incentive to divest from resources that pose no cost risk to them; they have no "skin in the game," and the PD does not go far enough to spur the

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4 Cal. Pub. Util. Code § 366.2(f)(2).

5 PD at 19.

utilities to act. More active oversight of potential divestment of expensive contracts is needed and successive RFI processes are a small, first step to ensure that overall customer costs are reduced to the greatest extent practicable.

The Joint CCAs do recognize several improvements to the process that could address stakeholder concerns. First, the Commission can reaffirm that no counterparty would be forced to participate in a purely voluntary process, as described by the Working Group 3 proposal, and as requested by NextEra, IEP, and AWEA.[6] Second, review of rejected offers does require reporting of such rejections and the justification for such rejections, but provisions could be made to keep the identities of the counterparties confidential, as requested by IEP and AWEA.[7] Third, the Proposed Decision can clarify that the RFI process should pursue cost reductions from the entire PCIA portfolio and not just solely RPS resources. These solutions address while allowing the Commission to create the regulatory leverage necessary to spur the IOUs to act.

II. DISCUSSION REGARDING THE PRUDENT CONTRACT ADMINISTRATOR STANDARD SHOULD BE DEFERRED.

The Joint CCAs agree the "prudent contractor administrator" standard should apply to RFIs, as proposed by parties in this proceeding, including both "IOU actions and inactions with respect to contract assignment and modification offers."[8]

However, further discussion, and any legal conclusions, regarding this standard should be deferred to a future proceeding. This is a highly technical and arcane issue, one on which the

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[6] *Id*. at 32.

[7] *Ibid*.

[8] R.17-06-026, *Opening Comments of California Community Choice Association on the Final Report of Working Group 3 Co-Chairs Southern California Edison Company (U 338 E), California Community Choice Association, and Commercial Energy*, at 12 (Mar. 13, 2020).

WG 3 Co Chairs were unable to reach consensus.[9] The issue concerns interpretation of several statutes, and the interplay of those statutes with a long-standing body of Commission decisions. Unfortunately, detailed discussion of this issue is very limited in the Proposed Decision, basically consisting of one sentence, without accompanying analysis.[10] But any decision here will have extremely broad impact, including on all future IOU ERRA Compliance proceedings.

This issue deserves more analysis, consideration and input than has been possible in this proceeding. This subject should also be considered when circumstances are available for considered review and discussion, for example, in an RPS Compliance proceeding in which the completed RFI reports are subject to review or in the IOUs' ERRA Compliance proceeding in which an IOU's specific actions, or inactions, over the course of the record period are under review. At this time, without concrete examples to discuss, the issue is not ripe.

As a result, the Joint CCAs respectfully request deferral of this issue until such time, and in such proceeding, where actual facts and circumstances can be considered. The Joint CCAs suggest that the Proposed Decision be amended to avoid any legal interpretation on the standard for review of IOU inaction in contract management and, instead, defer any such consideration to another proceeding.

III. A Q1 TIMELINE FOR ERRA RATE IMPLEMENTATION CAN PROVIDE NEAR-TERM RELIEF FOR THIS YEAR'S ERRA FORECAST PROCEEDINGS.

Revising the Proposed Decision to adopt the utilities' largely uncontroversial suggestion to implement rates from the ERRA Forecast proceedings in Q1 will release a substantial amount of the pressure those proceedings face this year. The need for this change is imminent, with San

[9] *Ibid*; R.17-06-026, *Final Report of Working Group 3 Co-Chairs: Southern California Edison Company (U-338E), California Community Choice Association, and Commercial Energy*, at 64 (Feb. 21, 2020).

[10] PD at 31: "We agree that CalCCA's argument appears to conflate the more rigorous and specific requirements for least-cost dispatch with the other requirement for "prudent contract administration."

Diego Gas & Electric Company (SDG&E) having already filed its case on April 15, 2021, and Southern California Edison Company (SCE) and Pacific Gas & Electric Company (PG&E) scheduled to file on June 1, 2021.

The Commission's December 16, 2020, Amended Scoping Ruling asked whether the Commission should "modify deadlines or requirements of ERRA and PCIA related submittals and reports in order to increase time for parties to review PCIA data and to facilitate timely implementation of decisions in the ERRA proceedings."[11] A critical need for such revisions has existed for a number of years, as the complexity of the PCIA calculation—and the resulting number of issues in contention—has increased. Even prior to the decisions in this proceeding reforming the PCIA, D.18-10-019 and D.19-10-001, the CCAs had repeatedly requested opportunities to revise the annual ERRA process, and resulting Annual Electric True-Up.[12] Those requests were intended to ensure both stakeholders and the Commission have sufficient time to adequately analyze the complex and high-stake issues in an ERRA proceeding, while also acknowledging the need to litigate the proceeding on an expedited timeline.[13]

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[11] R.17-06-026, *Assigned Commissioner's Amended Scoping Memo and Ruling*, at 5 (Dec. 16, 2020) ("Amended Scoping Ruling").

[12] R.17-06-026, *California Community Choice Association's Comments on Assigned Commissioner's Amended Scoping Memo And Ruling*, at 17-18 (Jan. 22, 2021) ("CalCCA Opening Comments on Amended Scoping Ruling").

[13] *Id*. at 18-19 (noting the Joint CCAs laid these challenges out graphically with regard to PG&E's 2019 ERRA Forecast case: "Addressing the November Update was a difficult task—an exercise in legal triage that barely maintained due process thanks to an extraordinary ALJ ruling and the unusual but necessary step of requiring a Tier 2 Advice letter to implement an ERRA forecast decision. It required analyzing 80 pages of updated testimony, scrutinizing 13 sets of workpapers, participating in two informal workshops, submitting and reviewing responses from two sets of discovery totaling 29 data requests (excluding tens of additional sub-parts), drafting 35 pages of comments, and submitting a Motion to add 15 exhibits to the record. The parties had ***10 days*** to accomplish all of these tasks, which turned into 12 days given the timing of the update resulted in a Saturday deadline.").

The Proposed Decision declines to take on any of these issues.[14] On some of the more controversial questions of data transparency and ERRA balance crediting, the delay is understandable. The Joint CCAs were disappointed by the utility's reply comments to the Amended Scoping Ruling not taking a more collaborative approach,[15] instead clinging to opaque and outdated procedures that fail to reflect (1) the increase in load-serving entities in the State over the past decade; and (2) a PCIA framework that relies on all interested parties having access to the IOUs' internal data—a framework the IOUs themselves have largely endorsed over the course of the instant proceeding.

However, the Joint CCAs urge the Commission to reconsider its inaction with regard to one particularly important—and unopposed—suggestion from the utilities. In their January 22, 2021 comments, the IOUs stated they "are open to exploring potentially moving the target ERRA implementation date, and the complete Consolidated January 1 rate change, back slightly (*e.g.*, to a date within Q1)."[16] CalCCA agreed that pushing back the rate change date has merit,[17] and no other party opposed the suggestion.[18] A Q1 rate change maintains the November Update's current use of the most recent data from the critical late summer months to inform the

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[14] PD at 5-6 (stating "After review of party comments on the 2020 Scoping Memo, we determined that the PCIA issues relating to the ERRA proceeding require further record development. We will continue to explore ERRA proceeding timing, ERRA data transparency, and methods for crediting or charging departing customers for ERRA balances.").

[15] R.17-06-026, *Joint Reply Comments of Southern California Edison Company (U 338-E), San Diego Gas & Electric Company (U 902 E) and Pacific Gas and Electric Company (U 39 E) to Commissioner's Amended Scoping Memo and Ruling*, at 5-13 (Feb. 5, 2021).

[16] R.17-06-026, *Joint Response of Southern California Edison Company (U 338-E), San Diego Gas & Electric Company (U 902 E) and Pacific Gas and Electric Company (U 39 E) to Assigned Commissioner's Amended Scoping Memo and Ruling*, at 15 (Jan. 22, 2021) ("IOU Comments on Amended Scoping Ruling").

[17] R.17-06-026, *California Community Choice Association's Reply Comments on Assigned Commissioner's Amended Scoping Memo and Ruling*, at 3-6 (Feb. 5, 2021).

[18] *See, e.g.,* R.17-06-026, *Reply Comments to Assigned Commissioner's Amended Scoping Memo and Ruling of The Direct Access Customer Coalition and Alliance For Retail Energy Markets* (Feb. 5, 2021).

following year's rates, while also giving the Commission *and parties* adequate time to review, analyze workpapers, conduct discovery on, and draft comments addressing it.[19] The absence of such time to review charges to customers raises due process concerns. There was some small, unnecessary controversy on this issue: the utilities twisted this otherwise productive suggestion by proposing giving all of the additional time to the Commission's internal processes and none to parties needing more time to analyze the late-breaking data in the November Update.[20]

However, in the near term, the question of the best way to take advantage of any additional time can be left to the presiding officers in each ERRA forecast proceeding. Simply endorsing a Q1 rate change as part of this case will give the parties and judges in those proceedings sufficient breathing room to devise procedural schedules that provide every party a fair and adequate opportunity to be heard. Such additional time also would reduce controversy on discovery timelines and other procedural issues involving the November Update. We urge the Commission to provide this near-term relief to the parties – and judges – in those proceedings by endorsing a Q1 implementation timeline as part of the Proposed Decision in this case.

In the event the IOU makes any changes to PCIA rates apart from the annual schedule described above, the IOU should provide all impacted LSEs with a notice of their intent at least 60 days in advance. Doing so will enable LSEs to best protect customers and will reduce volatility and rate shock.

IV. CONCLUSION

The Joint CCAs appreciate the opportunity to submit these comments and requests adoption of the recommended changes proposed herein. For all the foregoing reasons, the Commission should modify the proposed decision as provided in Appendix A.

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19 CalCCA Opening Comments on Amended Scoping Ruling at 17-19.

20 IOU Comments on Amended Scoping Ruling at 14-15.

Respectfully submitted,

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APPENDIX A

Pursuant to Rule 14.3(b) of the Commission's Rules of Practice and Procedure, the Joint CCAs offer the following index of recommended changes to the *Proposed Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization*, including proposed changes to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs. The proposed revisions appear in underline and strike-through.

Findings of Fact

Proposed New Finding of Fact:

11. An unknown number of counterparties to PCIA contracts may be amenable to contract buyouts or buydowns that could save ratepayers money. A systematic process for identifying such counterparties is warranted and should be periodically repeated as market conditions may change.

Conclusions of Law

Proposed New Conclusions of Law (and renumbering of subsequent):

14. The costs of contracts with counterparties amenable to buydown or buyouts under reasonable and cost-effective terms are avoidable and may not be charged to the PCIA.

15. This decision does not amend or establish any standard, or include any legal interpretation on the standard for review of IOU inaction in contract management. The Commission will determine in a subsequent proceeding how to review IOU actions and inactions with respect to buydown or buyout offers and what costs are subject to disallowance.

16. The Commission should review, approve, and monitor the RPS VAMO, and resolve outstanding policy issues and monitor RFI activities through the Commission's RPS proceeding, and review the results of the RFI process in the ERRA compliance proceeding.

17. Each IOU should propose an RFI for Contract Assignments and Contract Modifications in its 2021 RPS Plan and in every other year thereafter.

18. Adopting a Q1 implementation timeline in the ERRA Forecast proceedings will give parties and the Commission additional time to ensure rates resulting from that case are reasonable, calculated accurately and implemented correctly.

19. Moving the rate implementation timeline from the utilities ERRA Forecast proceedings from December 31 to the first quarter of the forecast year is reasonable.

20. Requiring IOUs to provide 60-day advance notice of any PCIA rate changes will provide transparency to customers and prevent rate shock.

Ordering Paragraphs

Proposed New Ordering Paragraph (and renumbering of subsequent):

10. After the initial RFI process, the IOUs shall engage in subsequent RFI processes no less frequently than every two years.